

# A Contractual Look at the Role of Religion in the Stability of Marriage

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*Abstract.* This paper uses a modified contractual model to study the role of religion—via entry and exit costs—in shaping preferences for getting and staying married. The religions that are analyzed are two “collective” religions: Judaism and Christianity. The paper takes a historical and contemporary look at how religious traditions affect marriage, using a modified contractual lens, which enables us to theorize about long-run marriage and divorce rates.

*Keywords:* contract, marriage, divorce, exit costs, religion, bride price, dowry

## 1. Introduction

Economists study the role of religion in marriage, finding religion not only a “complementary trait within marriage” but also something that affects the activities that a husband and wife engage in (Lehrer 2004a). Much of this came about with Becker’s competitive market model of marriage and matching model. The essence of the Beckerian economic approach is the “combined assumptions of maximizing behavior, market equilibrium, and stable preferences, used relentlessly and unflinchingly” (Becker 1976, 5). With the Beckerian model as the framework, numerous empirical studies on marriage have been published using contemporary data.

Religious identity plays a major role in whether individuals enter marriage or cohabit. By age 20, Jews, followed by Catholics, are the least likely to get married. Conservative Protestants and Mormons are the most likely to get married. The unaffiliated and mainline Protestants fall in between. When it comes to cohabitation, those who attend religious services regularly are less likely to cohabit by age 20 than those who rarely attend (Lehrer 2004b). Numerous authors have written about the role of Judaism in the marriage market. Jewish intermarriage in the United States has been rising and some of the factors involved include how strongly one was raised in

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the faith (e.g. Jewish schools), how assimilated one's parents are in the United States, the branch of Judaism, whether one took part in *Bar* or *Bat Mitzvah*, education, and other factors (Waite and Friedman 1997). One paper uses the Beckerian approach to analyze the impact of Jewish law on marriage markets. This paper deals with entry and exit costs and sees religion as a price mechanism to facilitate marriage: a *Ketubah* (Jewish marriage contract), for example, can be seen as a "legislated increase in the material benefits that a woman can obtain in return to her wife-services" (Grossbard-Shechtman 2002).

Religion plays an important role in preference formation; that is, religion shapes preferences for getting and staying married. This paper analyzes the different entry and exit costs found in Christianity and Judaism today and in history using the modified contractual framework, which states that higher exit costs make one more likely to marry and will result in more divorce, but a *very high* exit cost will result in fewer people marrying and fewer people divorcing. Extremely low exit costs result in less marriage *and* less divorce (Bose 2017). Analyzing what religions say on entry and exit costs and analyzing these costs using a modified contractual framework supplements the literature on how marriage contracts are impacted by religion. Further, applying Christian casuistry under the modified contractual framework adds to the literature. The focus here is mainly on marriage and secondarily on the topic of the family.

This paper is organized as follows. Section 2 reviews the traditional relational contractual view of marriage and the modified contractual view of marriage. Section 3 details how the institution of religion (Judaism and Christianity)—through entry and exit costs and other mechanisms—affects preference formation for marriage. The modified contractual model is used as a framework to understand the effect of religious teachings on marriage. Section 4 discusses the contractual view on the role of religion in marriage and divorce today. Section 5 concludes.

## **2. A contractual view of marriage**

This section reviews the ideas from the economics of contract law to discuss marriage, focusing in on the modified contract model based on the Laffer Curve.

### *Traditional contractual model to marriage*

According to the contract literature, there is a tradeoff between making promises and the enforceability of those promises. If the courts always enforce promises, then one can rely more heavily on the value of the promises, resulting in higher quality promises. The tradeoff here is that it could lead to a reduction in the number of promises made if exit costs are high (i.e., if costs to breach are high). Further, these higher quality promises will naturally be more highly

qualified. Hence, there is a tradeoff between the quality and quantity of promises made. The goal of the courts is to find the optimal level of enforcement (Goetz and Scott 1980), such that contracting parties take the right amount of precaution and the right amount of reliance (Cole and Grossman 2011).

Using the standard economic theory of contracts and applying it to marriage, if divorce (exit) is easier then more people should be willing to enter into a marriage contract *ex ante*—which means we should see more marriage and more divorce. Similarly, if divorce (exit) is harder, then fewer people should be willing to enter into a marriage contract *ex ante*—which means we should see less marriage, less divorce, and more marriage-substitute arrangements such as cohabitation.

A long-term contract is desirable to protect the large investments required in a marriage. Furthermore, children are an important asset in a marriage that result in both costs and benefits that last a lifetime, which means a secure marriage contract is even more desirable when raising children. Marriage vows also contain an insurance contract aspect, the parties to the contract promising to stay together and fulfill their duties through thick and thin (Cohen 1998, 619). The opportunity cost of breach is different for men and women. Men and women lose value on the marriage market at different rates as they age, and this results in divorced men remarrying at a faster rate than divorced women. Hence, this also necessitates certain restraints against breach (Cohen 1998, 14).

When social pressures do not sufficiently protect marriage, legal and legislative efforts become more important. For example, couples might employ prenuptial contracts—which the courts take seriously within certain limits—which may specify spousal obligations during the marriage and the terms of a divorce (Cott 2000, 209).

### *The modified contractual view of marriage*

The Laffer Curve model of marriage and divorce extends and improves the traditional contractual view of marriage (Bose 2017).

When exit costs are exceptionally high, the Long-run Marriage Rate (LRMR) will be very low, but not zero (because High Value Types, those who value marriage for its permanence and are willing to make large investments in marriage, will want to get married regardless of the exit costs whereas Low Value Types, those who see marriage as an outdated institution and are unwilling to make large investments in marriage,<sup>2</sup> will not desire to get married), and the Long-run Divorce Rate (LRDR) will be exceedingly low (with married couples finding various

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<sup>2</sup> The distinction between Low Value Types and High Value Types is not of a binary nature, but rather is a continuous distribution.

alternatives, e.g., living apart, if they want to divorce but are unable). The age of first marriage will be higher for the High Value Types because there will be fewer potential mates interested in marrying, as many opt out of marriage *ex ante* because it is next to impossible to exit *ex post*.

On the other hand, if exit costs are minimal, the LRMR will be low due to the availability of substitutes such as cohabiting. Once again, the High Value Types will want to get married but will have to spend their time in *this scenario* searching not for a spouse who wants to marry, but one who might *stay* in the marriage. (The Low Value Types might either cohabit or marry depending on whether the marginal benefit of marriage exceeds the marginal cost of marrying). The LRDR will also be low since only High Value Types will marry and any Low Value Types that might marry will likely divorce.

When exit costs are increasing, the LRMR will be higher up to a certain point. This is because Low Value Types will start entering the marriage market, as the reliability of the promises will allow people to increase their beneficial reliance and to prepare better, but the Low Value Types will also divorce more, hence increasing the divorce rate up to a point.

Hence, unlike standard contract theory, increased reliability (increased exit costs) would increase the number of marriages, but only up to a certain point. Similarly, increased exit costs increases the number of divorces up to a certain point before declining.

### **3. Religion as institutional constraint**

While this section focuses on Judaism and Christianity, the findings may certainly be extended to other religions. The religions chosen have different entry and exit costs and also have changed over time. Religions give *ex ante* parameters for responsibilities in marriage, means to adapt to future contingencies, and guidelines regarding what to do in case of failure to fulfill the marriage contract. Further, religions are also important in preference formation of individuals and societies. Religions can encourage or discourage marriage formation and stability by changing the ratio of High Value Types and Low Value Types.

#### *Judeo-Christian legislation: high entry & high exit cost*

While Judaism and Christianity are different religions, they have some common areas of understanding. The Mosaic legislation, which is found in the Torah, has substantive comments on marriage and is tied to high entry and high exit costs. Jews practiced this legislation in the past, but this practice has undergone several changes. Some contemporary Christian scholars, and those from the Reformation era, also have an interest in this legislation and see it as a model for application in Christian marriages today.

The institution of “bride price” is the case of high entry cost into marriage and it is also tied to the high exit cost of marriage. The bride price was typically a large amount of money paid by the bridegroom or the groom’s father to the bride’s father, not a “bride-purchase fee but the bridal gift by the bridegroom to the bride” indicating a responsible person (Rushdoony 1973, 417). Some scholars do see the bride price as a “purchase price for the bride” (Schauss 1950, 129).

The term used in the Bible for bride price is the *mohar* (Zeitlin 1933, 3). Typically this sum would be the equivalent to three years’ worth of income that the bride’s father would invest and eventually give to the bride and her children (Rushdoony 1982, 7). However, there is some debate as to what the bride’s father does with the bride price. One of the options for the father is to invest the money, but it is conceivable that the father uses the bride price for his own use, (Epstein 1923, 270). If the latter case occurred, the father would be considered “unkind” and “harsh” (Schauss 1950, 128). The father could also set the *mohar* very high to discourage certain suitors.<sup>3</sup> The groom’s family could also pay the *mohar* in kind or in service.<sup>4</sup> Additionally, there is also the *matton*, which was the gift given to the bride by the groom (Schauss 1950, 127). Occasionally in a well-to-do family, the father would provide his daughter with property, servants and an inheritance (Schauss 1950, 129). Since the bride price is very large, the family of the bridegroom helps the bridegroom accumulate the bride price. Further, since the bride’s father keeps the bride price, a typical marriage involves both families very closely and therefore becomes a mechanism of social pressure for the couple to stay married for their lifetime.

Gary Becker (1981, 86f) writes about bride prices and dowries as means to obtaining one’s spouse. He sees bride prices or dowries as monetary transfers to clear the marriage market. And if the transfer is to compensate parents, then in the case of bride price, for example, the parents of the daughter would “invest optimally” in their daughter’s accumulation of human capital.

The stigma of lost virginity prior to marriage whether by consent or rape, required the payment of the *mohar* as a fine to the girl’s father (Exodus 22:16-7). Further, the wife was protected from her husband if he accused her falsely of not being a virgin when they married. This accusation is likely motivated by the husband’s desire to obtain a divorce, for if the accusation was proved true then his wife would be stoned to death. But if false, Deuteronomy 22:13-9 states that a substantial fine of 100 shekels of silver was to be paid to the bride’s father—and this in addition to the earlier bride price he would have paid. Further, the husband forfeited his right to divorce. This provision forces specific performance and monetary damages from the husband to prevent such fraud.

<sup>3</sup> This is inferred from the Dinah incident, as recorded in Genesis 34.

<sup>4</sup> The story of Jacob (Genesis 29) illustrates the sum of seven years’ worth of work that he had to perform before he could marry one of Laban’s daughters. Another example is found in the story of Caleb and Othniel, where Othniel captured a city and was given Caleb’s daughter in marriage as his reward (Joshua 15).

The exit cost of the Mosaic legislation was high and this is partly tied to high entry costs of the bride price. Divorce was justified for some reasons. During divorce, the innocent party was given the property rights to the bride price: if the husband was innocent, he got back the bride price he paid, plus interest, and so was guaranteed he could pay a bride price to remarry; if the wife was innocent, her father kept the bride price, which would guarantee for his daughter that he could negotiate another husband for her. The bride price that the father kept made his divorced daughter more “attractive” to potential mates, even though women after divorce were “less highly valued” in the marriage market than before their first marriage (Cohen 1987, 268).

From a contractual perspective, the bride price is a form of hostage-taking that forces performance of both the husband and the wife. It also protects the quasi-rents<sup>5</sup> of mainly the wife. The bride price also reduces the likelihood of strategic or opportunistic terminations of the contract by the breadwinner. Further, accumulating the bride price allows the bridegroom to signal his high quality<sup>6</sup> to prospective brides, hence making his marriage vows more believable. “A higher quality promise motivates a more valuable return promise” (Goetz and Scott 1980, 1285).

If marriage vows are believable and any breach is compensated to the party not at fault, it incentivizes the formation of a more traditional family (i.e. the husband as the breadwinner and the wife as primarily engaged in household production). Further, it allows families to invest in children (quality) and to have more children (quantity). Additionally, it allows for the development of the marriage premium for married men over single men, since marriage itself raises productivity because a spouse augments/increases productivity (Daniel 1995). A wife can augment productivity by contributing to a husband’s central or peripheral tasks or help with his human capital (Grossbard-Shechtman 1986).

If the marriage vow is believable, it is in the best interests of the wife to provide augmentation capital as a “stock of capital.” However, if marriage vows are not believable, it is better for the wife to provide augmentation capital as a “flow of services” (e.g. performing housework—so that, if a divorce occurs, the flow of services stops). In contrast, for a stock of capital, the husband takes the capital with him if there is a divorce (Daniel 1995, 118).

Moreover, in a married state with the bride price in the bride’s home, the arrangement increases the bargaining power of the bride. The bride price also discourages divorce and consequent breakup of the family by making divorce costly for both the husband and wife. Table 1 shows the effect of the bride price in changing the surplus for two couples. Prior to the bride price, couple 2 will divorce. If it is easy to divorce and transaction costs are nil, then Tom and

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<sup>5</sup> A quasi rent is a “return to one party in a contract above what the party could receive if the contract could be dissolved at will at that moment” (Cohen 1987, 287).

<sup>6</sup> For example, it could signal a highly disciplined character or indicate that he has a low time preference.

Nancy divorce. If it is difficult to divorce, then Tom can pay Nancy to get a divorce (or a separation). Couple 1 will stay together even though Jane wants to leave. If it is easy to divorce, John can pay Jane to stay together and if it is hard to divorce, they will stay together with no payments made. However, with the bride price, the positive surplus for both couples results in them staying together, regardless of the difficulty in obtaining a divorce. The bride price paid, upon a contractual breakdown, to the innocent party is quite large and from today's economic perspective, it could be argued, is above expectation damages (the innocent party obtains damages in full measure as if the contract were carried out, which leaves the potential victim indifferent between performance and breach) (Goetz and Scott 1980).<sup>7</sup>

		<i>Value of marriage</i>	
		<i>Couple 1</i>	<i>Couple 2</i>
<i>Initial value</i>	John	\$14	Tom -\$24
	Jane	-\$10	Nancy \$20
		\$4	-\$4
<i>Final value</i>	Bride price	\$6	Bride price \$6
		\$10	\$2

*Table 1.* Surplus of marriage to two couples under a bride price regime

The bride price serves as a mechanism for reducing uncertainties in the future. The uncertainties of the future could reduce the benefits from marriage or make performance difficult, but the bride price makes for a less risky marriage (Scott and Scott 1998, 1267). For example, the bride price serves as life insurance on the husband, protecting the wife and children in case of the husband's premature death.<sup>8</sup>

Another avenue for remarriage under Mosaic Law was through the death of one's spouse. Further, death by capital punishment, resulting from unlawful acts, created a lawful separation and so justified divorce and remarriage. Rushdoony (1973) argued that any unlawful act punishable by death under the Mosaic legislation should, if committed today, still justify divorce, whether or not the act is considered a capital offence. Further, substantial failure to perform the marriage vow was also grounds for divorce. For example, failing to provide food, clothing and sexual relations was sufficient cause for divorce. Divorce was allowed in cases of consanguinity

<sup>7</sup> If damages are above expectation damages, then the contract is strengthened—but this is not optimal from an economic perspective, as it results in inefficient overreliance.

<sup>8</sup> All this assumes that the bride price is kept safe for the wife by her father. This was not always the case, as we note with Laban, who had “eaten up” the money of his daughters Leah and Rachel (Genesis 31:14-6).



and mixed marriages (Rushdoony 1973, 403). Finally, a husband could write his wife a “certificate of divorce” (Deuteronomy 24:1-4) for some serious “indecent.” Some have suggested that this passage gives the husband the right to unilateral divorce, but this right is only limited by the *ketubah* (Broyde and Reiss 2004, 10).<sup>9</sup>

From a modified contractual perspective, when considering the Mosaic legislation of high entry and high exit cost, one would expect higher long-run marriage rates and higher long-run divorce rates. High entry and exit costs can be socially efficient—provided the difference between the marriage rate and divorce rate is maximized. With Mosaic legislation encouraging marriage, one would also expect a higher proportion of High Value Types to Low Value Types, which would allow for reaching the socially efficient level.

*The evolving Jewish application of the mohar: low entry cost and high exit cost*

The application of the *mohar* by the Jews has evolved over time. Some of the innovations on the Mosaic legislation increased the bargaining power of the man, at the expense of the woman and her family, thereby decreasing the stability of marriage. The *ketubah* evolved to the point where the husband paid to the wife a fixed amount of 200 *zuz* and 200 *zekukim* of silver (Broyde and Reiss 2004, 1). This fixed sum, unlike a proportional amount based on one’s earnings, created several problems. Many men could not afford to pay this amount and many women were not willing to marry without the *mohar*. Further, men with high incomes could not easily signal that they were High Value Types. Therefore, economic and human necessity produced innovations. Consequently, to encourage marriage and lower the immediate entry cost, the bridegroom was allowed to pay the *mohar* later or at times the bride’s father paid a dowry so the marriage could occur. Further, while the bride’s father was the initial trustee of the *mohar*, this changed when the bridegroom’s father became the trustee. This allowed the husband to have access to the *mohar* that typically was invested in household utensils. While the husband benefited immediately from the *mohar*, the wife’s position was weakened in case of a divorce (Friedman 1976, 24).

In the end, the bridal price during the late biblical and post biblical times “became a lien to be paid by the husband in case of divorce, or by his heirs in case of his death” (Schauss 1950, 142). Other changes occurred among the Jews as they were dispersed around the world. The Hellenized Jews of Egypt practiced the dowry (Satlow 2001, 201). If the dowry is seen as a pre-mortem inheritance for the daughter, it tends to improve a daughter’s bargaining power in

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<sup>9</sup> The premarital contract “contained terms regulating the conduct of each party in the marriage and discussing the financial terms would the marriage dissolve through divorce or death” (Broyde and Reiss 2004, 1).



marriage and improves her marital welfare (Brown 2003, 26). However, for this to work, the dowry must be secure, in the daughter's control, and relatively large. In virilocal societies, dowries grant property rights to the bride in a marriage and give her leverage in the "ex post distribution of products within the family" (Zhang and Chan 1999, 788). The Babylonians and Palestinian Jews had variations in the practice of the *ketubah* (Satlow 2001, 202). For example, the Palestinian Jews around the time of Christ, practiced mutual dowries during betrothal; at the actual marriage, however, the groom would also provide an additional 200 *zuz* and help secure an advantage for the bride (Edersheim 1993, 245).

In the United States, the value of the 200 *zuz* and 200 *zekukim* has been valued from \$180 to \$55,000 depending on how a Rabbi calculates it.<sup>10</sup> The latter high estimate is tied to one year's support. These amounts (except for the one year's support) can be further reduced by 87.5%, since pure silver is not needed (Broyde and Reiss 2004, 7). The financial components of the *ketubah* have rarely been enforced in United States courts and it is usually not litigated. The New York Supreme Court (*In Re Estate of White*, 356 N.Y.S. 2d 208, at 210 {NY Sup. Ct, 1974}) has said "even for the observant and Orthodox, the *ketubah* has become more a matter of form and ceremonial document than a legal obligation." In a later case, the New York Court of Appeals required the couple to arbitrate with the *bet din* (Jewish religious court) without discussing financial obligations of the *ketubah* (*Avitzur v. Avitzur*, 459 N.Y.S.2d 572 {1983}). An Arizona court ruled that the courts might enforce the *ketubah* if the *ketubah* was very specific (*Victor v. Victor*, 866 P.2d at 902 {1993}). In conclusion, while the miniscule value of the *ketubah* reduces the wife's bargaining power, the fact remains that women cannot be divorced against their will. The husband must negotiate with his wife and provide her with sufficient compensation to leave the marriage (mutual consent). This compensation could be higher than the value of the *ketubah*. If there is the issue of fault with one spouse, it does strengthen the other spouse's negotiating power. When analyzing the low entry costs and relatively higher exit costs, one would expect (when compared to the Mosaic legislation) a lower long-run marriage rate and possibly a lower long-run divorce rate—with the latter depending on the proportion of High Value and Low Value types.

*The Christian influence: from high exit to low entry and low exit costs*

The Christian influence in family law has been substantial when seen from a contractual perspective. The spread of Christianity occurred in pagan societies, which means that the shift in marriage norms from the pre-Christian era to the Christian era resulted at times in dramatic

<sup>10</sup> These numbers are based on the value of silver of \$4.6 for a troy ounce of 0.999% silver on August 6, 2002. Value of silver on November 27, 2020 is \$22.7, hence the numbers would be larger.

changes in entry and exit costs. Primarily, it raised the level of women to be equal to men, which meant that women were equal partners in the contract and had better bargaining power. The Christian influence pushed out the dominant Aristotelian “paternal aristocracy” view to one of “servant fatherhood and a new love ethic of equal regard between husband and wife” (Browning 2008). Secondly, it defined the marriage along quantitative<sup>11</sup> (two persons) and qualitative (male and female) lines, eliminating various other contractual and competing arrangements. Thirdly, it increased the status of children, allowing them to be more effectively used as hostages in keeping the family together. Fourthly, it increased the status of the family government over and above civil and church government,<sup>12</sup> thereby strengthening marriage and family and changing social mores to support the family.

Family law in the West has changed over time in the past 2000 years. Starting in the fourth century A.D., attempts were made to collect all imperial ordinances in a *codex* or *corpus juris*. The first two attempts resulted in the *Codex Gregorianus* and *Codex Hermogenianus*, of which only fragments remain. The *Codex Theodosianus*, which was compiled between 429 and 438 A.D. under Theodosius II, contained laws passed by Christian emperors from Constantine onwards along with certain non-Christian elements (Schaff 1867, 110). Between 527 and 534 A.D., during the reign of Justinian I, the celebrated *Codex Justinianus* was compiled and became the law of the Roman Empire. It, too, contained both Christian and non-Christian elements. The *Codex Justinianus* contains this preface for the section on family law:

Previous Legislation has dealt with aspects of these matters piecemeal. Now we seek to put them all together and give the people certain clear rules of conduct so as to make the family (*de nuptiis*) the standard form of life for all human beings for all time and everywhere. The purpose of this is to guarantee artificial immortality to the human species. This is the Christian way of life (Zimmerman and Cervantes 1956, 61).

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<sup>11</sup> Polygamy creates various problems. They include the man having to spend equal time and equal resources for each of his wives. Further issues of jealousy, in-laws, childrearing, and other disputes weaken marriages and families. Current Jewish practice also prohibits polygamy per edict of Rabbi Gershom. While this edict is mostly applicable in Christian lands, it is practiced by Jews almost worldwide (Grossbard-Shechtman 2002). However, under some circumstances, e.g. low gender ratio, making an allowance for polygamy improves a woman’s welfare (Grossbard 1980).

<sup>12</sup> The Christian influence can be seen in the 1828 Webster Dictionary’s definition for government. Webster’s first and second definitions of “government” refer to individual self-government. Next he refers to government as family government. His next definition of government and his definition of “churchdom” imply government by the church and more broadly the issue of school, business/vocation and private associations, which by social expectations also serve to govern. In his final definitions, Webster focuses on the state as government, i.e., “civil” government, “civil” distinguishing this form of government from the others (Webster 1828).

In 321 A.D., Constantine permitted women to have the same rights as men in controlling property. He also removed old Roman penalties against celibacy and childlessness;<sup>13</sup> he forbade marriage between certain degrees of blood relationship (prohibitions derived from the Mosaic legislation); made adultery a serious crime; and made rape of widows and consecrated virgins punishable by death. In 390 AD, Theodosius I allowed a mother to have “certain right” of guardianship of her children. Justinian forbade marriage between godparent and godchild. The state wavered between the Church doctrine of limiting divorce strictly to instances of adultery and the much more liberal old Roman view of divorce. Constantine forbade concubinage and broadened the definition of adultery (which previously applied only to “illicit sexual relations with a married woman who was a free citizen”). The laws stopped short, however, of criminalizing sexual relations with female slaves (Schaff 1867, 113).

Alexander Severus and Constantine rescinded the old Roman or Pompeian law, which allowed fathers to kill their children. The selling of children as slaves and exposure of children by their fathers was difficult to stop and was practiced by those especially in the laboring and agricultural classes, despite legislation by Valentinian and Theodosius I designed to minimize such practices (Schaff 1867, 114). Stopping this practice strengthens the marriage contract by making children more effective hostages by limiting the power of the husband in the contract.

Zimmerman and Cervantes (1956, 61f) give a five-point analysis of the reform of the emperor Justinian and his empress Theodora: first, only marital heterosexual relations were considered legal; second, the law applied to all social classes with no exceptions; third, those sexual acts deemed illegal were punishable by law, especially commercialized sex; fourth, “contracts involving non-family sex activities as repayment for support or gifts were made illegal” and concubines lost their legal status; and fifth, these reforms strengthened the family and established it as the foremost factor in societal progress.

The laws of inheritance and property were also changed to reflect the dominant role of the family. For example, only the legitimate wife and her children could inherit the property, not a concubine or a mistress. The family was “now far more than the basic social unit: it was in essence the social system” (Rushdoony 1973, 200) enhanced by Christianity. These reforms defined marriage, secured the marriage contract by raising exit costs, and provided an optimal environment for raising children. From a modified contractual perspective, the shift from pagan marriage practices to Christian practices raised entry and exit costs which would increase the long-run marriage rate and the long-run divorce rate.

These reforms by Justinian in marriage and family law held for many centuries, even with changes. One change that was not Biblical, but which was instituted by the Church, was banning

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<sup>13</sup> The *Julian laws*, for example, prohibited young widows and celibates from receiving inheritances ([en.wikipedia.org/wiki/Lex\\_Julia](http://en.wikipedia.org/wiki/Lex_Julia), accessed November 30, 2020).

marriage of close blood relations, starting in the 8<sup>th</sup> century. At one point, the banning of consanguinity extended up to the 7<sup>th</sup> degree. This was likely done to weaken the family ties in favor of the Church (Schulz 2016). During the 12<sup>th</sup> and 13<sup>th</sup> centuries, there was a merger by Aquinas of Christian thought with Aristotle's ideas regarding marriage where the notion of "kin altruism" is incorporated (Browning 2008). Further, the Reformation rejected the sacramental view of marriage that came from the Catholic Church where divorce was very difficult to obtain. This rejection of the sacramental view allowed for divorce and remarriage under additional conditions, thus lowering exit costs and encouraging marriage. The Lutherans looked at the Old Testament law and also earlier Church teachings to allow for more expansive reasons for divorce (Witte 1997). Calvin also had a major impact on laws of marriage for Geneva. Betrothals were public affairs and involved the community, where objections to a couple's marriage could be raised. Cohabitation prior to marriage was prohibited, and pregnant brides-to-be were required to make public confession. Once married, there were opportunities to exit that included "adultery, harlotry, concubinage, or sodomy"; exit also required an open hearing (Witte 1997, 85).

Starting in the Age of Reason (enlightenment), family law began to evolve. "The Age of Reason saw man as reason incarnate, and woman as emotion and will, and therefore inferior" (Rushdoony 1973, 349). Further, during the enlightenment, marriage was not seen as sacramental or covenantal, but rather as a voluntary bargain between two parties themselves (Witte 1997, 197), holding that God was not an active agent in these affairs. The changing ideas impacted the early 19<sup>th</sup> century law books and clearly were instrumental in decreasing the bargaining power of the wife in the marriage contract. For example:

The legal theory is, that marriage makes the husband and wife one person, and that person is the husband. He is the substantive and she the adjective. In a word, there is scarcely a legal act of any description, which she is competent to perform. The common reason assigned for this legal disfranchisement of the wife, is, that there may be an indissoluble union of interest between the parties. In other words, lest the wife might be sometimes tempted to assert rights in opposition to her husband, the law humanely divests her of rights (Walker 1837, 223).<sup>14</sup>

In one case, when the wife was charged with the murder of her illegitimate child by failing to provide proper food, the judge in the case talks about the wife as the servant of her husband (Wharton 1853, 163). Numerous laws related to the family were reformed in the 19<sup>th</sup> century including divorce, alimony, child custody, with marriage being easier to enter into and dissolve

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<sup>14</sup> This language carries through until the 10<sup>th</sup> edition of this book, which was published in 1895.

(Witte 1997, 207). The state also replaced the authority of the church from the earlier era. In the 20<sup>th</sup> century, these changes have continued. In the US, divorce is granted relatively easily, abortion is allowed without the father's input, and custody is traditionally granted to the woman, which weakens the notion of children as hostages. This is now changing in favor of joint legal and physical custody (Lecter 2005, 407). Today, all US states have no-fault divorce laws, either as the only ground required for divorce or as an additional ground. This weakens the marriage contract, which has become a sort of 'terminal sexual contract' (Witte 1997, 209). Under current laws, fault does not have to be proven, "all that is required is to claim that there exists irretrievable breakdown or irreconcilable differences between spouses or desertion" (Lecter 2005, 411). (The pleading party has merely to show that they are unhappy and that "leaving home or dissolving the marriage is the only solution" (Lecter 2005, 411). However, contemporary law allows either spouse to theoretically get spousal maintenance. In conclusion, from a modified contractual perspective, the lowering of entry and exit cost will lower the long-run marriage rate and the long-run divorce rate.

#### **4. Application of the modified contractual view in marriage today**

Is religion important for the issues of marriage and divorce in our current society? In a paper by Call and Heaton (1997, 386) we see the result of Christianity and Judaism on divorce. Attending religious services frequently lessens the likelihood of divorce compared to attending less frequently or not at all. The Jewish divorce rate is lower than the Protestants, Catholics and those with no religious affiliation. There is a small difference between Protestant and Catholics in their divorce rate, with the Catholic divorce rate slightly smaller than that of Conservative Protestants.

According to the modified contractual model, very high exit costs should result in low divorce and marriage rates. According to Becker, "Indeed in Latin America [with its strong Catholic influence and sacramental view of marriage], where divorce is usually impossible, a relatively small fraction of the adult population is legally married" (1976, 243). The Catholics in general have come out strongly against divorce, unlike many Protestant denominations, hence providing an extralegal mechanism through the church to strengthen marriage. However, the very high exit costs have resulted in not just low divorce rates, but also low marriage rates.<sup>15</sup> Empirical studies by others on the effect of the Catholic Church's opposition to divorce confirms this trend (Michael and Tuma 1985, Sander 1993, Lehrer 2004a).

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<sup>15</sup> See population data by Marital Status (% of total) and Marriage and Divorce Rates per 1000 Inhabitants for Year 2002 (Source: Latin American Marketing Data and Statistics 2004, 2<sup>nd</sup> Ed).

Further, Christians do not practice any form of bride price other than the engagement ring,<sup>16</sup> which means that entering and exiting the marriage is relatively easy. This makes it harder for High Value Types to find a suitable spouse who will want to stay married, and hence affects the marriage and divorce rate by lowering them as many delay marriage. In another study, when one moves from those whose religious beliefs are “somewhat important” to “very important,” there is a 22 percent decrease in “subsequent divorce” (Knoester and Booth 2000, 90), indicating that social pressures help increase exit costs and help High Value Types and some Low Value Types to stay married.

One puzzle that economists have not looked at is why—with increasing church membership (Iannaccone, Finke, and Stark 1997, 357)—there are still high divorce rates amongst Christians in the US. Even though Christian doctrine discourages divorce, the divorce rate amongst Christians is high. As stated earlier, very few, if any, Christians pay a bride price for entry, but there are other reasons that economists have not looked at. One hint comes from Stephen Prothero, a historian of American religion. He notes that in America faith is “almost entirely devoid of content” (2007, 1). He remarks that early in the history of the United States, the “God-fearing faith of Calvinism yielded to the Jesus-loving faith of evangelicalism, and American religion became less intellectual and more enthusiastic” (2007, 46f). Christianity today is about “loving Jesus; it does not require knowing much of anything at all” (2007, 87). This lack of understanding of advanced doctrine like marriage, divorce, and family government, is likely the driving force in the increasing divorce patterns in the United States, where a majority of the people profess Christianity. Therefore, Christianity in the United States through the Church does not provide any efficient extralegal enforcement mechanism through community expression of norms. Christianity does not seem to substantially affect people’s preferences for marriage (i.e. moving people from being Low Value Types to High Value Types) and in fact, the effect might go the other way (i.e., moving people from High Value Types to Low Value Types). Hence, while Christian legislation is *de jure* high entry and high exit cost in marriage, the *de facto* Christian practice in the United States is of low entry and low exit cost.

Further, hints emerge as to what occurs when doctrines from a religion do not play a part in people’s life. In Denmark, where 88% of the population are members of the State Church, but only 4% attend Church weekly (Davie 2000, 40), there is no stigma attached to cohabitation. Here 78% of marriages have been preceded by “trial marriages.” And those who engage in this lifestyle and marry have a lower risk of divorce (Svarer 2004). This contradicts many earlier studies done on cohabitation in the United States, where cohabitation still does carry a stigma due to religious

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<sup>16</sup> Starting in the mid 1930’s, many states eliminated the breach of promise laws. This, according to Brinig (1990, 213), increased the demand for a bond or pledge. The diamond ring served as a collateral such that the person breaking the contract would lose property rights to the ring.

teachings against it. A recent study using US data shows that there is an increased risk of divorce if couples live together before marriage. Only for the first year of marriage is there a lower risk of divorce if a couple lives together before marriage (Rosenfeld and Roesler 2019).

Therefore, the role of religion, and how its adherents practice it in society, plays a large role in marriage and divorce, but today generally it is of low entry and exit cost—especially for Protestant Christianity.

## 5. Conclusion

Since marriage is an important (foundational) institution in society, it is a topic of interest for various social scientists. Many economists and lawyers have studied this issue, especially since Gary Becker. Marriage is a special type of contract where increased reliability up to a point, increases the number of marriages. The flow of services and benefits of marriage are dependent on exit costs being relatively high. Entry and exit costs are important determinants in the stability of marriage. Religions that have an entry cost in marriage increase the value of the promises made and hence strengthen marriage and improve the status of women.

Table 2 shows where the religions discussed in the paper are located in terms of entry and exit cost. Using the modified contractual model, one can make predictions as to what one can expect in terms of marriage rate, divorce rate and the effect of these costs on High Value Types and Low Value Types.

	<i>High exit cost</i>	<i>Low exit cost</i>
<i>High entry cost</i>	<i>de jure</i> Christianity & Judaism	
<i>Low entry cost</i>	<i>de facto</i> Judaism & Catholicism	<i>de facto</i> Christianity

Table 2. Entry and exit costs of different religions

In the United States, couples wishing to use their faith to guide their marriage when writing a prenuptial contract face many hurdles in the legal enforcement area. For example, it is difficult to write a contract to escape the no fault divorce provisions in state laws and there are in general excessive constraints on marital contracting (Scott and Scott 1998, 1327 and 1232). It might make sense to offer a menu of choices for couples to write a contract to fit their needs and the Louisiana Covenant Marriage Act (1997) does take a step in this direction. While



enforcement might be costly, using the decisions of, for example, church courts in determining fault could reduce the costs to broader society. Further, this might require “giving some authority to religious law enforcement officers” as during earlier eras (Grossbard-Shechtman and Lemennicier 1999).

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